

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 983 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VASANTBHAI B PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BJ JADEJA for Petitioner

Mr N.D.Gohil, Asstt.Govt. PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/07/2000

ORAL JUDGEMENT

1. The petitioner herein challenges the order of the
Additional Chief Secretary (appeals) ,Revenue Department,

passed in SRD/ Land/ ST/ Dasu/ 1/ 90 on 6.12.1990 confirming the order passed by the Collector, Surat in Land/Appeal/ Permission/ Special Case No. 266/90 in exercise of powers under section 73AA of the Land Revenue Code, passed on 26.4.1990.

2. The petitioner purchased Block No. 84, admeasuring 2 acres- 25 Gunthas and Block No., 85B, admeasuring 1 acre- 23 Gunthas of land of village Choryasi, taluka Kamrej of District Surat from one Reshamabhai Jinabhai. The lands were of 'New Tenure' and were subjected to restrictions as contained in section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948. Reshamabhai was resident of village Kathor of Surat district. He had no issue, had grown old and was under debt. A Satakhat was, therefore, entered into between the petitioner and Reshamabhai on 15.6.1981 whereafter, permission was sought by deceased Reshamabhai for sale of the land from the Deputy collector, Olpad which was granted vide order No. TNC/ Vashi/ 1134/81 dated 15.10.1981 on condition of payment of premium of Rs. 1312.20. That amount was paid and the transaction was completed by execution of a registered sale deed by Reshamabhai Jinabhai in favour of the petitioner on 19.10.1981.

2.1 On 7.8.1984, the Deputy Collector, Songadh issued a notice under section 73AA of the Land Revenue Code calling upon the petitioner to show cause why⁶⁷the transaction should not be set aside and the land should not be forfeited to the Government. A reply was given by the petitioner. In reply to the notice, it was contended that the transfer/sale was made after due permission from the Deputy Collector, Olpad. It was also contended that there was nothing to indicate that the lands in question were subject to restrictions as contained in section 73AA of the Code. It was contended that while granting permission, the Deputy Collector was aware about the fact that transferor Reshamabhai belonged to Bhalia Koli community and with this knowledge, permission was granted. After considering these contentions, notice issued by the Deputy Collector. Songadh was discharged vide order dated 19.8.1985.

2. After discharge of the notice vide order dated 19.8.1985, the Additional Chief Secretary again took up the order in suo motu revision and issued a notice on 6.6.1989 to show cause why the transaction should not be set aside on account of breach of provisions of section 73AA of the Code. This notice was replied to by the petitioner raising same contentions. The Additional

Chief secretary did not accept the contentions raised by the petitioner. He, therefore, quashed and set aside the order and remanded the matter to the Collector, Surat for examination of cash afresh in view of provisions of section 73AA of the Code.

2.3 The Collector, Surat issued a notice under section 73AA of the Code on 25.4.1990 which was replied to by the petitioner again raising same contentions. The contentions, however, were not accepted by the Collector. The Collector held that the transaction was invalid due to breach of provisions of section 73AA and forfeited the land to the Government and also imposed a penalty of Rs. 43,900/- on the petitioner vide an order dated 26.4.1990.

2.4 Aggrieved by the said order, the petitioner approached the Additional Chief Secretary (appeals), Revenue Department with a revision application. The Additional Chief Secretary rejected the revision application confirming the order of the Collector. It is this order which has given rise to the present petition.

2.5 The reasonings adopted by the authorities below are that the Deputy Collector, Songadh had acted beyond jurisdiction and had confirmed or approved the transaction which was in violation of provisions of section 73AA of the Code. It was observed that vendor viz. Reshamabhai Jinabhai was a tribal. By virtue of provisions of section 73AA which came into force on 1.2.1981, the land could not have been transferred without prior permission of the Collector to a non-tribal. The petitioner is a non-tribal and the transaction is, therefore, invalid.

3. The petitioner assails the orders on the grounds of belated action on the part of the authorities as well as on merits. It is contended by Mr. Jadeja on behalf of the petitioners that the transaction was entered into in 1981. Notice was issued under section 73AA by the Deputy Collector, Songadh in 1984 and the same was discharged in 1985. Notice was issued suo motu after lapse of about three years. Mr. Jadeja contended further that as if this were not enough, the Additional Chief Secretary again took the order in suo motu revision and issued notice on 6.6.1989, even after lapse of about eight years from the date of transaction and after lapse of four years from the date of order discharging the notice under section 73AA. Mr. Jadeja, therefore, submitted that this action was grossly belated and, therefore, may be set aside.

3.1 So far as merits are concerned, Mr. Jadeja

submitted that from the beginning, it is the case of the petitioner that there was nothing to indicate that the land was subject to restrictions under section 73AA of the Code. There are entries to this effect in the record. The petitioner, therefore, cannot be expected to know about these restrictions. He submitted, further, that the transaction was entered into after it was approved by the Deputy Collector, Olpad when an application was made by the vendor to then Deputy Collector, Olpad for grant of permission for sale as the land was new tenure land. In the said proceedings, the vendor had clearly indicated that he belonged to Bhalia Koli community which is a scheduled tribe and, therefore, the Deputy Collector can be said to be conscious about the fact that vendor belonged to a scheduled tribe and, therefore, land cannot be sold to a non-tribal i.e. the petitioner. With this knowledge, the Deputy Collector, Olpad granted permission for transfer of land subject to payment of premium. Mr. Jadeja submitted that even thereafter, Deputy Collector, Songadh took up that transaction in suo motu revision under section 73AA and having found that transaction was genuine and not in breach of any provision, discharged the notice. Mr. Jadeja submitted that the Collector, while passing the order, though having been contended before him that there was no entry in the records to indicate that the land was subject to restrictions under section 73AA, has not dealt at all with these arguments in his order and the Additional Chief Secretary has also not taken into consideration this aspect. Mr. Jadeja submitted that the transaction is of 1981, the petitioner has been occupying the land since then and has made improvement in the land by spending sizable amount. Equity, therefore, also requires that this transaction may not be set aside. Mr. Jadeja, therefore, submitted that these aspects having not been considered by the authorities below, petition may be allowed.

4. Mr. N.D. Gohil, learned AGP has opposed this petition. His contention is that the Deputy Collector, Songadh had acted without jurisdiction. He could not have taken any action under section 73AA. He further submitted that the land has been transferred by a tribal to a non-tribal and, therefore, the transaction is invalid in absence of permission which can be granted only by the Collector. The impugned order is, therefore, legal and valid and may not be interfered with.

5. Having regard to rival-side contentions, the first and foremost feature that clinches the issue is that action is initiated by the authorities at a belated

stage. The transaction was entered into by the parties in 1981, after obtaining due permission from the Deputy Collector, Olpad, as the land was subject to restrictions under section 43 of the Tenancy Act. The first notice was issued by the Deputy Collector, Songadh in 1984 and was discharged in 1985. So, there was gap of about 2 years and 10 months in issuing the notice which was, however, discharged in August, 1985. Thereafter, the order was taken in suo motu revision by the Additional Chief Secretary by issuing notice in June, 1989. If this date is considered from the date of discharge of notice, there is gap of about three years and 10 months whereafter suo motu action is initiated. In that suo motu revision, the order of the Deputy Collector, Olpad was set aside and the matter was remanded to the Collector, Surat for deciding afresh the question and the Collector passed order in October 1991 after issuing notice in April, 1990. Thus, notice was issued after lapse of about eight years from the transaction and after five years from the discharge of earlier notice under section 73AA of the Code and the transfer was held to be invalid after ten years from the date of transaction and six years from discharge of earlier notice. This time-lag cannot be considered to be reasonable. In this regard, if section 73AA is seen, sub-section (4) provides that the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on an application made by the tribal transferor or his successor in interest at any time within three years from the said date or the date of such transfer, initiate proceedings, if there is breach of sub section (1) of section 73AA viz. if the land belonging to a scheduled tribe is transferred to any person without previous permission of the Collector. Thus, the limitation prescribed for initiation of action taken by a tribal transferor or his successor is three years and no specific time limit is given for initiation of suo motu proceedings. What then can be taken the limitation within which such action can be taken? In this regard, decision of the Apex court in the case of Mohmed Kavi Mohmed Amir vs. Fatima Ibrahim, 1997 SAR (civil) SC 783 may be profitably referred to. It was held therein that where a power is given to the statutory authority without prescribing any time limit., it does not mean that it can be exercised at any time. Such power may be exercised within reasonable time. In that case, inquiry under section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 was initiated. Entry was made in February 1973 which was taken in inquiry in 1976 and it was held by the Apex court that the powers were not exercised by the Mamlatdar within reasonable time. A similar view is taken by this

court in the case of Jiviben Kalaji Bapuji vs. State of Gujarat and others, 1998 (2) GLH 556.

Mr. Jadeja has also relied on:

- (i) State of Gujarat vs. Raghav Natha, 10 GLR 992;
- (ii) Habibn Nasin Khanji vs. State;, 11 GLR 307;
- (iii) Bhagwanji Bawanji vs. State, 12 GLR 156 ;
- (iv) Rajul Cooperative Housing society Ltd.
vs. State, 24 (2) GLR 1187,
to substantiate his contentions.

6. Thus, in the instant case, if the factual aspect is considered, the authorities were aware about the transaction from the beginning that the transaction was entered into with the permission of the Deputy Collector. Further, the Deputy Collector ,Songadh had taken the action under section 73AA. The petitioner, therefore, can be said to have been led to a reasonable and bona fide belief that the transaction does not suffer from any defect which may attract disapproval. He has spent money for improvement of the land and after discharge of notice, to initiate proceedings after lapse of about 3 years and 10 months is quite unreasonable.

7. Mr. Gohil has relied on the decision in Gangaben vs. Collector, 1997(1) GCD 722 (Guj) to support his say that action is not taken belatedly. In that case, it was held that action after three years in exercise of powers under section 211 of the Code cannot be said to be unreasonable so as to invite the revisional order. But if the facts of that case are seen, it is found that the matter came to the notice of the Deputy Collector that construction was raised on the land in question as also as regards breach of condition under the ULC Act and, therefore, it was held that delay of three years was not unreasonable. It is settled proposition of law that where limitation is not provided, action is required to be taken within reasonable time and whether the time taken in taking action is reasonable or not has to be decided in the facts of each case. There cannot be any straitjacket formula for that purpose. In the instant case, the authorities were aware about the transaction and therefore, the above decision may not be of help to the respondent authorities.

8. Mr. Gohil also relied on an unreported judgment of this court in Hiten P. Desai vs. State of Gujarat and others, (Special civil application No. 614 of 1988, decided on 2.7.1991). He submitted that in that case, action after lapse of about 5 to 6 years was held to be

valid. Having gone through the judgment, it is found that decision was rendered by this court in the peculiar facts of that case. It was categorically observed that decision in the case of State of Gujarat vs. Raghav Natha is well settled proposition of law, but considering the facts of that case, it was held that the petitioner had committed breach of terms and conditions of grant. Action, though taken after 5-6 years cannot be considered as unreasonably delayed. This decision, therefore, cannot help the respondent authorities as it is rendered in the peculiar facts of that case. as in the circumstances of the present case, in view of this court, the orders suffer from the defect of delayed action, as considered from any angle, it cannot be said that the action is taken within reasonable time, either from the date of transaction or from the date of discharge of the notice by the Deputy Collector. Petition, therefore, deserves to be allowed on this ground alone.

9. Even on merits, if the case is considered, it may be noted that the transaction was entered into by the parties after obtaining permission from the Deputy Collector, Olpad as the lands was of new tenure. In those proceedings, it was categorically stated that Reshamabhai Jinabhai, the vendor, was Bhalia Koli belonging to scheduled tribe and the purchaser-petitioner did not belong to scheduled tribe. this aspect was known to the authorities concerned and despite that, permission was granted. It is worth mentioning that provisions of section 73AA were brought into force on 1.2.1981 and the transaction was entered into soon thereafter i.e. in October, 1981, permission was granted by the Deputy Collector on 15.10.1981 i.e. subsequent to insertion of the provisions. There is nothing on record to indicate that land was subject to restrictions of section 73AA. This contention was raised before the Collector as referred to by him in his order while narrating the submissions made on behalf of the petitioner (respondent before him). This contention has not been dealt with by the Collector while deciding the question. This aspect has not been considered by the Additional Chief Secretary also. In the circumstances, on merits also, the case of the petitioner is based on sound footing.

10. Petition, therefore, deserves to be allowed and is allowed. Impugned orders dated 26.4.1990 passed by the Collector and dated 5.2.1991 passed by the Additional Chief Secretary are quashed and set aside. Rule made absolute. No costs.

(A. L.Dave,J.)

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